

## **§ 788.5**

or conclude, upon reexamination of an interpretation, that it is incorrect.

### **§ 788.5 Reliance on official interpretations.**

Under section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259), official interpretation issued under the Fair Labor Standards Act of 1938 may, under certain circumstances, be controlling in determining the rights and liabilities of employers and employees. The interpretations of the law contained in this part are official interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal Act so long as they remain effective and are not modified, rescinded, or determined by judicial authority to be incorrect. However, the failure to discuss a particular problem in this part or in the interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy.

### **§ 788.6 Scope of the section 13(a)(13) exemption.**

Employees will not be held exempt under section 13(a)(13) unless they are clearly shown to come within its terms. (*Wirtz v. F. M. Sloan Co.*, 411 F. 2d 56 (C.A. 3), 18 WH Cases 878; *Gatlin Lumber Co. v. Mitchell*, 287 F. 2d 76 (C.A. 5) cert. denied, 366 U.S. 963.) By its terms, the exemption is limited to those employed in the named operations by an employer who employs not more than eight employees therein. The named operations are described in terms of ordinary speech and mean what they mean in ordinary intercourse in this context. These operations include the incidental activities normally performed by persons employed in them, but do not include mill operations.

### **§ 788.7 “Planting or tending trees.”**

Employees employed in “planting or tending trees” include those engaged in weeding, preparing firebreaks, removing “seeding, planting seedlings, pruning, rot or rusts, spraying, and similar operations when the object is to bring about, protect, or foster the growth of

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trees.” “Tending trees” would also include watching the timberland to guard against thefts and fire (*Gatlin Lumber Co. v. Mitchell*, 287 F. 2d 76, cert. den. 366 U.S. 963).

### **§ 788.8 “Cruising, surveying, or felling timber.”**

Employees engaged in “cruising \* \* \* timber” include all those members of a field crew whose purpose is to estimate and report on the volume of marketable timber. Employees engaged in “surveying \* \* \* timber” include the customary members of a crew accomplishing that function such as the chairmen, the transit men, the rodmen, and the axmen who clear the ground of brush or trees in order that the transit men may obtain a clear sight. Similarly, the usual members of a crew which go to the woods for the purpose of felling timber and preparing and transporting logs are engaged in operations described in the exemption. Typically included, when members of such a crew, are fellers, limbers, skidders, buckers, loaders, swampers, scalers, and log truck drivers.

### **§ 788.9 “Preparing \* \* \* logs.”**

Preparing logs includes, where appropriate, removing the limbs and top, cutting them into lengths, removing the bark, and splitting or facing them when done at the felling site, but does not include such operations when done at a mill. Employees engaged in sawmill, tie mill, and other operations in connection with the processing of logs, such as the production of lumber, are not exempt.

### **§ 788.10 “Preparing \* \* \* other forestry products.”**

As used in the exemption, “other forestry products” mean plants of the forest and the natural properties or substances of such plants and trees. Included among these are decorative greens such as holly, ferns and Christmas trees, roots, stems, leaves, Spanish moss, wild fruit, and brush. Gathering and preparing such forestry products as well as transporting them to the mill, processing plant, railroad, or other transportation terminal are among the described operations. Preparing such